

MAE News

Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

Winter 2013

Volume 8, Number 4



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Compliance Training for Employers/Insurers

The April 25th and 26th open training session is full. Additional sessions will be held June 20th and 21st and October 24th and 25th. Please contact Anne Poulin to reserve a spot. Remember, open training is now held at the Maine Department of Labor, at 45 Commerce Drive in Augusta. Attendees will receive directions prior to training.

The Board has also been busy doing on-site training for insurers, self-insurers, 3rd-party administrators as well as employers. If you would like information about on-site training for your organization, please contact Gordon Davis at 207-287-6327, or by email at Gordon.Davis@Maine.Gov.

New Partial Rate Calculation

For dates of injury on or after January 1, 2013, partial benefits can be calculated in either of two ways – 1) the method used for dates of injury prior to January 1, 2013, i.e. use the employee's weekly compensation rate (WCR) minus the WCR based on the partial earnings for the week, or 2) simply take 2/3 of the employee's pre-injury average weekly wage (AWW) minus the partial earnings for the week (AWW minus partial earnings times two divided by three).

The Board continues to use method one in its training, although either method is acceptable at audit as they produce the same result. Just be careful NOT to use method two for injuries prior to 1/1/13, as they do NOT produce the same results.

If you have any questions or concerns, please contact Gordon Davis at 207-287-6327, or by email at Gordon.Davis@Maine.Gov.

From the Office of Medical/Rehabilitation Services "Silent Preferred Provider Organizations"

The Office of Medical/Rehabilitation Services receives several inquiries each week from health care providers regarding Silent Preferred Provider Organization (Silent PPO) reductions/discounts. These inquiries are leading to an increase in the number of disputes regarding medical payments.

If you are unfamiliar with Silent PPOs, the American Association of Preferred Provider Organizations (AAPPO) and the American Medical Association (AMA) agree that any entity that takes a physician or other health care provider discount without the contractual right to do so or without disclosing when a network contract is applied to a claim is a Silent PPO.

Maine is one of about 20 states without Silent PPO laws. The AAPPO and the AMA both support the disclosure of contractual intents, purposes and commitments, the disclosure of the network contract applied to a claim, and mutually agreed upon consideration in exchange for the provider contract discount, such as patient steerage, benefit differentials applicable to in and out of network providers, other financial incentives or prompt payment of claims.

For additional information and resources, contact the AMA, American Hospital Association and/or the AAPPO.

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126th Legislature

New Leadership at the Committee Level

On January 8, 2013, the 126th Legislature began. Since then, legislative leadership has made the various Joint Standing Committee assignments, as well as appointed the chairs of those various committees. The make-up of the Labor, Commerce, Research and Economic Development Committee is as follows:

Senate: John L. Patrick, Chair (D-Oxford)

John J. Cleveland (D-Androscoggin)

Andre E. Cushing III (R-Penobscot)

House: Erin D. Herbig, Chair (D-Belfast)

Paul E. Gilbert (D-Jay)

Scott M. Hamann (D-South Portland)

Andrew T. Mason (D-Topsham)

Anne-Marie Mastraccio (D-Sanford)

Amy Fern Volk (R-Scarborough)

Brian M. Duprey (R-Hampden)

Lawrence E. Lockman (R-Amherst)

Ellen A. Winchenbach (R-Waldoboro)

James J. Campbell, Sr. (I-Newfield)

Find the committee's meeting schedules, meeting agendas and stream live audio at www.maine.gov/legis.

Section 102.4(D) – The “Fallback Provision”

Title 39-A M.R.S.A. Section 102.4(D) states, “When the methods set out in paragraph A, B or C of arriving at the average weekly wages, earnings or salary of the injured employee can not reasonably and fairly be applied, ‘average weekly wages’ means the sum, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class working in the same or most similar employment in the same or a neighboring locality, that reasonably represents the weekly earning capacity of the injured employee in the employment in which the employee at the time of the injury was working.”

Section 102.4(D) requires you to consider the past wages of the injured employee *and* of other comparable employees (in the plural). Be sure to obtain and forward to the Board at least two comparable wage statements in addition to the employee's own wage statement. This section does not require a mathematical formula for calculating the AWW, but rather instructs us to use the aforementioned wages to determine an AWW that is a fair and reasonable representation of the injured employee's future earning capacity (at the time of the injury).

Section 102.4(D) may *only* be applied after the first three methods of calculating AWW (Sections 102.4(A) through 102.4(C)) have been ruled out and is commonly referred to as the “fallback provision”. If one of the first three methods of calculating AWW can be applied to produce a fair and reasonable representation of the injured employee's future earning capacity (at the time of the injury), they must be applied and you would not revert to the fallback provision. If the fallback provision is used, please be sure to document the reason(s) that the first three methods cannot be applied and the method used to determine a fair and reasonable AWW.

If you have any questions or concerns, please contact Rick Giffin at 207-287-8873, or by email at Rick.Giffin@Maine.Gov.